

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Accessibility of User Interfaces, and Video	)	MB Docket No. 12-108
Programming Guides and Menus	)	
	)	

**Comments of  
WTA – Advocates for Rural Broadband**

WTA – Advocates for Rural Broadband (“WTA”) responds to the Media Bureau’s Public Notice<sup>1</sup> and files these comments in support of the Petition<sup>2</sup> filed by the American Cable Association (“ACA”) on June 15, 2018 requesting waivers of the video accessibility requirements of Section 79.108 as they apply to a system’s two way service offerings.

Specifically, ACA’s Petition requests that the Media Bureau:

waive the requirements of Section 79.108 as they apply to a system’s two-way service offerings, if the system: (i) satisfies the definition of a digital cable system under Section 76.640(a) of the Commission’s rules; and (ii) is not offering a user guide as of December 20, 2018 that either enables the accessibility of all functions required by Section 79.108 that are offered by the system or for which the provider of such guide has released either a software update or application for a third-party device that alone would enable the accessibility of all such functions offered by the system.

ACA also requests that the Media Bureau:

grant a full waiver from the requirements of Section 79.108 for a system that (i) qualifies for the partial waiver of Section 79.108 as it applies to a

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<sup>1</sup> Public Notice, *Media Bureau Seeks Comment on American Cable Association’s Petition*

<sup>2</sup> Petition for Waiver of the American Cable Association, MB Docket No. 12-108, filed on June 15, 2018, available at <http://www.americancable.org/fcc-petition-for-waiver-re-accessibility-of-user-interfaces-and-video-programming-guides-and-menus/>.

system's two-way service offerings; (ii) has 20,000 or fewer subscribers; and (iii) that, as of December 20, 2018, offers any video programming channels in only an analog format or does not offer broadband Internet access service to its residential video subscribers.

ACA argues in its Petition that good cause exists due to the high costs of fully complying with the rules for many small and mid-sized MVPDs and the negative impact it would have on subscribers in the form of higher bills. Additionally, providers still offering video via legacy analog signals would likely be forced to discontinue their video service rather than make a costly upgrade to come into compliance. For the following reasons, WTA agrees with ACA's assessment.

**In The Current Video Marketplace, Coming Into Compliance May Be Too Costly For Many Small and Mid-sized Video Providers**

A waiver of the Commission's rules should be granted when both "(i) special circumstances warrant a deviation from the general rule and (ii) such deviation would be in the public interest."<sup>3</sup> As WTA noted previously in this proceeding, video providers, especially small and mid-sized providers, face suffocating pressure from the marketplace where they suffer ever increasing programming costs to the point that many are leaving the marketplace or are considering leaving. Profit margins are slim for providers where most lose money or at best, break even. In the case of rural America, that has resulted in precious funds being diverted from and/or unavailable for broadband deployment.<sup>4</sup> Therefore, WTA agrees with ACA that the cost of full compliance will be far too great for many already hard-pressed small video providers and will result in many leaving the

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<sup>3</sup> 47 C.F.R. § 1.3.

<sup>4</sup> Reply Comments of WTA – Advocates for Rural Broadband, MB Docket No. 108, filed on Nov. 13, 2017, at 6.

marketplace. This would leave many rural Americans without a video option outside of satellite offerings.

As ACA outlined in its earlier comments, the marketplace for video accessibility options did not develop as the Commission expected since the technologies developed by large providers are unable to be adopted by small providers.<sup>5</sup> This has left providers with few options to meet compliance, and in many instances, only partial compliance can be met. Specifically, the only option that offers all of the accessibility features required by the rules is the Quattro system developed by TiVo. However, the upgrades necessary for small providers to deploy that solution can cost at least \$100,000, making it simply unaffordable for those with small customer bases. Other more affordable “plug-in” options accessible via CableCard, such as the TiVo Bolt, meet most of the features, but do not offer accessible two-way communications, such as Video On Demand.<sup>6</sup> Meanwhile, analog systems will be unable to use plug-in devices.<sup>7</sup>

Therefore, ACA appropriately seeks waivers in two instances. The first is a temporary, partial waiver for all providers that use plug-in options. As ACA notes, such systems will be unable to meet the accessibility requirements for two-way communications. This waiver would be partial in the sense that most of the unidirectional and most fundamental requirements will be met. The waiver would be temporary in that it would no longer be effective once the “the MVPD deploys a user guide that would bring a system into full compliance.”<sup>8</sup> Also, if an update or application that works on

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<sup>5</sup> Petition at 6.

<sup>6</sup> Id. at 7-8.

<sup>7</sup> Id. at 13.

<sup>8</sup> See Comments of American Cable Association, MB Docket No. 12-108, filed October 30, 2017, at 18.

third party devices becomes available, the MVPD would have 180 days to deploy such a solution.<sup>9</sup> Undoubtedly, the waiver will give those providers the flexibility they need to comply with the rules, as current whole system upgrades may not be financially plausible for providers. But it also leaves the door open for possible new “plug-in” options that may have the capabilities to comply with the rules. Though WTA is supportive of the waiver, WTA is cautious regarding the establishment of a set number of days (in this case, 180 days) for a provider to comply with the rules once an update or application for a third party device becomes available. WTA’s concern is based on the fact that one can only speculate what such a solution may be like. Important questions on cost and generally availability cannot be answered right now, and that may result in some providers needing additional time.

The second instance is for a full waiver that would apply to providers that operate legacy analog systems as well as those video systems that do not offer residential broadband service. As ACA notes, this small subset of providers will be unable to use “plug-in” devices from TiVo, which do not have an analog tuner and therefore have a “diminished value to consumers” on analog systems.<sup>10</sup> Here, a waiver is needed because it is technically impossible for an accessibility solution to work on such a legacy system. Though all WTA members offer residential broadband, there are WTA members who still offer video in analog format. These members can attest to the high cost of upgrading the network and the preference of exiting the video market rather than performing an expensive upgrade when there is no financial benefit to do so. However, this does not

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<sup>9</sup> Id. at 9-11

<sup>10</sup> Id. at 12-14.

grant the provider a total and permanent waiver as it would no longer be eligible if it decided to upgrade to a digital offering.

It is also be worth mentioning that even if a waiver is granted for a provider, that it does not necessarily mean that visually impaired customers in their service territory are without options. As WTA noted in its reply comments, there are already several over-the-top (“OTT”) options that are running on more affordable devices and are regularly updated to have the newest accessibility solutions.<sup>11</sup> Such devices could be used to access a considerable amount of accessible content.

### **Conclusion**

WTA is supportive of ACA’s Petition and agrees that both requested waivers should be granted. They are necessary because small providers have very limited funds to upgrade their video infrastructure, given that most are either losing money, or at best, breaking even. As such, there are many providers who will not be able to comply with the impending rules.

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<sup>11</sup> WTA Reply Comments at 8.

Respectfully submitted,

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